

Chapter 19

Utah Uniform Collaborative Law Act

78B-19-101 Title.

This chapter may be cited as the "Utah Uniform Collaborative Law Act."

Enacted by Chapter 382, 2010 General Session

78B-19-102 Definitions.

In this chapter:

- (1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:
 - (a) is made to conduct, participate in, continue, or reconvene a collaborative law process; and
 - (b) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.
- (2) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.
- (3) "Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:
 - (a) sign a collaborative law participation agreement; and
 - (b) are represented by collaborative lawyers.
- (4) "Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.
- (5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution described in a collaborative law participation agreement.
- (6) "Law firm" means:
 - (a) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association;
 - (b) lawyers employed in a legal services organization;
 - (c) the legal department of a corporation or other organization; or
 - (d) the legal department of a government or governmental subdivision, agency, or instrumentality.
- (7) "Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.
- (8) "Party" means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.
- (9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (10) "Proceeding" means:
 - (a) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related pre-hearing and post-hearing motions, conferences, and discovery; or
 - (b) a legislative hearing or similar process.
- (11) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.
- (12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

- (13) "Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.
- (14) "Sign" means, with present intent to authenticate or adopt a record:
 - (a) to execute or adopt a tangible symbol; or
 - (b) to attach to or logically associate with the record an electronic symbol, sound, or process.
- (15) "Tribunal" means:
 - (a) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or
 - (b) a legislative body conducting a hearing or similar process.

Enacted by Chapter 382, 2010 General Session

78B-19-103 Applicability.

This chapter applies to a collaborative law participation agreement that meets the requirements of Section 78B-19-104 signed on or after May 11, 2010.

Enacted by Chapter 382, 2010 General Session

78B-19-104 Collaborative law participation agreement -- Requirements.

- (1) A collaborative law participation agreement must:
 - (a) be in a record;
 - (b) be signed by the parties;
 - (c) state the parties' intention to resolve a collaborative matter through a collaborative law process under this chapter;
 - (d) describe the nature and scope of the matter;
 - (e) identify the collaborative lawyer who represents each party in the process; and
 - (f) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.
- (2) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

Enacted by Chapter 382, 2010 General Session

78B-19-105 Beginning and concluding a collaborative law process.

- (1) A collaborative law process begins when the parties sign a collaborative law participation agreement.
- (2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.
- (3) A collaborative law process is concluded by a:
 - (a) resolution of a collaborative matter as evidenced by a signed record;
 - (b) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or
 - (c) termination of the process.
- (4) A collaborative law process terminates:
 - (a) when a party gives notice to other parties in a record that the process is ended; or
 - (b) when a party:
 - (i) begins a proceeding related to a collaborative matter without the agreement of all parties; or

- (ii) in a pending proceeding related to the matter:
 - (A) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;
 - (B) requests that the proceeding be put on the tribunal's calendar; or
 - (C) takes similar action requiring notice to be sent to the parties; or
- (c) except as otherwise provided by Subsection (5), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.
- (5) A party's collaborative lawyer shall give prompt notice to all other parties of a discharge or withdrawal, in accordance with the Rules of Civil Procedure.
- (6) A party may terminate a collaborative law process with or without cause.
- (7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by Subsection (4)(c) is sent to the parties:
 - (a) the unrepresented party engages a successor collaborative lawyer; and
 - (b) in a signed record:
 - (i) the parties consent to continue the process by reaffirming the collaborative law participation agreement;
 - (ii) the agreement is amended to identify the successor collaborative lawyer; and
 - (iii) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.
- (8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.
- (9) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

Enacted by Chapter 382, 2010 General Session

78B-19-106 Proceedings pending before tribunal -- Status report.

- (1) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to Subsection (3) and Sections 78B-19-107 and 78B-19-108, the filing shall include a request for a stay of the proceeding.
- (2) Parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes and request the stay to be lifted. The notice may not specify any reason for termination of the process.
- (3) A tribunal in which a proceeding is stayed under Subsection (1) may require parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.
- (4) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

Enacted by Chapter 382, 2010 General Session

78B-19-107 Emergency orders.

During a collaborative law process, a court may issue emergency orders, including protective orders in accordance with Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Part 2, Child Protective Orders, to protect the health, safety, welfare, or interest of a party or member of a party's household.

Enacted by Chapter 382, 2010 General Session

78B-19-108 Approval of agreement by tribunal.

A court may approve an agreement resulting from a collaborative law process.

Enacted by Chapter 382, 2010 General Session

78B-19-109 Disclosure of information.

Except as provided by law other than this chapter, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. Parties may define the scope of disclosure during the collaborative law process.

Enacted by Chapter 382, 2010 General Session

78B-19-110 Standards of professional responsibility and mandatory reporting not affected.

This chapter does not affect:

- (1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
- (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

Enacted by Chapter 382, 2010 General Session

78B-19-111 Appropriateness of collaborative law process.

Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

- (1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;
- (2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and
- (3) advise the prospective party that:
 - (a) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;
 - (b) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

- (c) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by the Rules of Professional Conduct.

Enacted by Chapter 382, 2010 General Session

78B-19-112 Coercive or violent relationship.

- (1) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.
- (2) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.
- (3) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:
 - (a) the party or the prospective party requests to begin or to continue a process; and
 - (b) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

Enacted by Chapter 382, 2010 General Session

78B-19-113 Confidentiality of collaborative law communication.

A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this state other than this chapter.

Enacted by Chapter 382, 2010 General Session

78B-19-114 Authority of tribunal in case of noncompliance.

- (1) If an agreement fails to meet the requirements of Section 78B-19-104, or a lawyer fails to comply with Section 78B-19-111 or 78B-19-112, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:
 - (a) signed a record indicating an intention to enter into a collaborative law participation agreement; and
 - (b) reasonably believed they were participating in a collaborative law process.
- (2) If a court makes the findings specified in Subsection (1), and the interests of justice require, the court may:
 - (a) enforce an agreement evidenced by a record resulting from the process in which the parties participated;
 - (b) apply the disqualification provisions of Sections 78B-19-105 and 78B-19-106; and
 - (c) apply the privileges in the Utah Rules of Evidence.

Enacted by Chapter 382, 2010 General Session

78B-19-115 Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Enacted by Chapter 382, 2010 General Session

78B-19-116 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.A. Sec. 7001 et seq. (2009), but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C.A. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Sec. 103(b) of that act, 15 U.S.C.A. Sec. 7003(b).

Enacted by Chapter 382, 2010 General Session